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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 vs.

15 TYRONE DAVIS,

16 Defendant.

CASE NO. 2:12-cr-00289-JCM-PAL

**MOTION TO CONTINUE
SUPPLEMENTAL BRIEF DEADLINE
FOR MOTION TO WITHDRAW
GUILTY PLEA**

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18 Defendant Tyrone Davis (“Davis”), by and through his attorneys of record, Armstrong
19 Teasdale LLP, hereby files this Motion to Continue the Supplemental Brief Deadline for Motion To
20 Withdraw Guilty Plea. This Motion is made and based upon the following Memorandum of Points
21 and Authorities, and all pleadings and papers on file in this action.

22 **I.**

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 On August 16, 2016, Davis filed a Motion to withdraw his guilty plea. *See* ECF No. 264. On
25 September 20, 2016, the Court held an evidentiary hearing on the Motion. ECF No. 274. During the
26 hearing, the Court granted Davis’ request for “an order permitting him to obtain any recorded
27 conversations between Davis and [his former attorney James Oronoz] between May 27 and June 6,
28 2016” at the Nevada Southern Detention Center in Pahrump, NV. ECF No. 275, p. 2. At the

1 conclusion of the hearing, the Court granted counsel 14 days “to supplement the record and for any
2 additional briefing, unless good cause is shown why additional time is needed.” ECF No. 274.

3 After the hearing, and seeking clarification as to precisely how to effectuate the Court’s Order
4 in light of the Federal Rules of Criminal Procedure and Davis’ indigent status, Davis moved for
5 issuance of a subpoena duces tecum for audio recordings between Davis, Mr. Oronoz, and his
6 colleague Lucas Gaffney, between May 27, 2016 and June 6, 2016. ECF No. 273. Davis attached a
7 proposed subpoena to that Motion, and requested that the audio recordings be produced to the law
8 firm of Armstrong Teasdale, LLP by 5:00 p.m. on September 28, 2016. *Id.*

9 On September 26, 2016, this Court entered an Order denying Davis’ motion, noting, *inter*
10 *alia*, that Davis had already obtained leave to obtain the audio recordings, and that it was not
11 appropriate for the recordings to be produced to Armstrong Teasdale, LLP. ECF No. 275 at p. 5.
12 However, the Court’s Order did require the Clerk of the Court to issue a subpoena to the Custodian of
13 Records for the Nevada Southern Detention Center to produce audio recordings on or before October
14 3, 2016 to the Clerk of the Court. *Id.* at pp. 5-6. The Order further noted that “[u]pon receipt of any
15 recordings, the Clerk of Court shall notify counsel for both parties that they are available for
16 inspection and copying.” *Id.*

17 On October 3, 2016, an issued subpoena was returned by the U.S. Marshal’s office with a
18 notation that “not enough time given to process prior to 9/28.” ECF No. 280. A review of the
19 subpoena reveals that it appears to have been issued in the format originally requested by Davis in his
20 Motion for leave to issue a subpoena, but which format was rejected by the Court.

21 Davis is not clear as to how this subpoena was issued notwithstanding the fact that the Court
22 denied his application for issuance of a subpoena. On October 4, 2016, this Court entered an Order
23 noting that the subpoena had been issued due to a clerical error, and ordered that the subpoena be
24 reissued and that a response be provided within 7 days of service.

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1 Based upon the above, this Court should find that good cause exists to extend the deadline to
2 supplement the record and for additional briefing on the Motion to withdraw guilty plea for a period
3 of 14 days. Davis does not have the information necessary to determine whether he needs to
4 supplement the record with a supplemental brief.

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7 DATED this 4th day of October, 2016.

ARMSTRONG TEASDALE LLP

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9 By: /s/ Kevin R. Stolworthy

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14 IT IS SO ORDERED this 5th
15 day of October, 2016.

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18 Peggy A. Leen

19 United States Magistrate Judge
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2016, the foregoing MOTION TO CONTINUE SUPPLEMENTAL BRIEF DEADLINE FOR MOTION TO WITHDRAW GUILTY PLEA was served on the party(ies) Pursuant to Fed.R.Civ.P.5(b), and Section IV of District of Nevada Electronic Filing Procedures ☒ via electronic service or ☐ by mailing a copy thereof, first class mail, postage prepaid, to:

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